



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

January 7, 2022

NOTICE OF ENTRY OF ORDER

TO: Powertech (USA) Inc.
c/o Matthew E. Naasz and Richard M. Williams, Counsel
Gunderson, Palmer, Nelson & Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

And Parties of Record Mailing List (see attached list dated January 7, 2022)

FROM: Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

SUBJECT: Adoption of Order regarding denying Powertech motion to amend procedural order, denying Clean Water Alliance's motion to allow electronic service, and updating parties of record concerning the contested case hearing for the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

At the Water Management Board meeting on December 8, 2021, the Board adopted the Order denying the Powertech motion to amend the procedural order, denying Clean Water Alliance's motion to allow electronic service, and updating the parties of record. Enclosed is a copy of the Order signed by Tim Bjork, Chair of the Water Management Board, dated December 8, 2021.

Notices, orders, and other pleadings filed in this matter are posted on DANR's contested case page available at <https://danr.sd.gov/public/contestedcases.aspx>.

Questions may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

c: Ann Mines Bailey, Assistant Attorney General
Steven R. Blair, Assistant Attorney General
David McVey, Assistant Attorney General

Parties of Record mailing list concerning the Consolidated Case in the matter of Water Permit Application
Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

January 7, 2022

Status "A" Intervenor:

Last Name	First Name	Company	Address	City	State	Zip
James	Frank	Dakota Rural Action	PO Box 549	Brookings	SD	57006
Baldwin	Angelia		8576 182nd Ave SE	Becker	MN	55308-8737
Boddicker	Mark		13850 Battle Creek Rd	Hermosa	SD	57744
Brunson	Cindy		11122 Fort Igloo Rd	Edgemont	SD	57735
Draeger	Rick		7810 E Oakmount St	Wichita	KS	67226-3529
Ellison	Bruce	Atttny for Clean Water Alliance	PO Box 2508	Rapid City	SD	57709
Gamache	Brenda		2337 Wilson Ave	Hot Springs	SD	57747
Gillis	W Cindy	Atttny for Oglala Sioux Tribe	522 7th St # 202	Rapid City	SD	57701
Henderson	Susan		PO Box 731	Edgemont	SD	57735
Hickey	Michael	Atttny for Wild Horse Sanctuary	PO Box 2670	Rapid City	SD	57709
Jarding	Lilias C		PO Box 591	Rapid City	SD	57709
Johnson	Andy		610 Nellie Ln	Spearfish	SD	57783
Kammerer	Marvin		22198 Elk Vale Rd	Rapid City	SD	57701
King	Sabrina		14705 Halter Ct	Piedmont	SD	57769
Kloucek	Frank J		29966 423rd Ave	Scotland	SD	57059
Knudson	Rodney		PO Box 25	Hulett	WY	85720
Leas	Rebecca R		21287 Sandal Foot Dr	Venice	FL	34293
McLean	Dahl H		11853 Acorn Ridge Rd	Spearfish	SD	57783
Parkhurst	Gena		PO Box 1914	Rapid City	SD	57709
Rowe	Cheryl A		7950 Dark Canyon Rd	Rapid City	SD	57702
Rowe	Roger		7950 Dark Canyon Rd	Rapid City	SD	57702
Uptain	Douglas		3213 W Main #112	Rapid City	SD	57702

Parties of Record mailing list concerning the Consolidated Case in the matter of Water Permit Application
Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

January 7, 2022

Status "B" Intervenor:

Last Name	First Name	Company	Address	City	State	Zip
Ackerman	Donald L		27128 Wonderland	Hot Springs	SD	57747
Alarie	Keith		330 S Summit Ave Apt 306	Sioux Falls	SD	57104-3592
Alarie	Kim		840 Spruce St Lot 320	Rapid City	SD	57701
Ames-Curtis	Juli		11936 Hay Creek Rd	Custer	SD	57730
Amiatte	Twyla		PO Box 125	Buffalo Gap	SD	57722
Arns	Harold		22723 Tawney Ct	Box Elder	SD	57719
Arpen	Jacqueline		2004 Maple Ave	Rapid City	SD	57701
Bad Wound	Brandon		639 Pahsapa Rd	Rapid City	SD	57701
Ball	Arina K		PO Box 46	Piedmont	SD	57769
Barnaud	Bernard & Laurie		12129 Sagebrush Rd	Nisland	SD	57762
Barnes	Thomas F		11778 Pleasant Valley Rd	Custer	SD	57730
Baumberger	Sudhi		12374 Baumberger Rd	Deadwood	SD	57732
Bellitz	Mark & Jennifer		2311 Woodlawn Ave	Missoula	MT	59804
Between Lodge	Annabelle		PO Box 118	Ogala	SD	57764
Binns	Edward H		408 N 17th St	Hot Springs	SD	57747
Boots	Mary		25588 Mt Shadow Rd	Edgemont	SD	57735
Boots	Wayne		25588 Mt Shadow Rd	Edgemont	SD	57735
Burrows	Mary R		545 N River St Apt 211	Hot Springs	SD	57747-6800
Caln	Wally		640 S 6th St	Hot Springs	SD	57747
Carle	Mary Kay		5821 Michael Ct	St Cloud	MN	56303
Christensen	Julie & Emily		1902 Washington Ave, Apt 8	Hot Springs	SD	57747
Christie	Sharon & Alex		PO Box 74	Buffalo Gap	SD	57722
Davies	Lynda		Po Box 1204	Hot Springs	SD	57747
Davis	Jeremiah J		130 E Centennial	Rapid City	SD	57701
Detmers	Joel		13488 Shelter Dr	Rapid City	SD	57702
Detmers	Peggy		13488 Shelter Dr	Rapid City	SD	57702
Nelson	Robert	City of Hot Springs	303 N River St	Hot Springs	SD	57747
Dicesare	Francis		1501 11st St	Rapid City	SD	57701
Durum	Kathy		10374 Dryland Dr	Edgemont	SD	57735
Engle	M.		115 Scott St	Edgemont	SD	57735
Engle	T.		115 Scott St	Edgemont	SD	57735
Evans	Wade		27338 Taylor Ln	Hot Springs	SD	57747
Fair	Cheryl		12909 Shep's Canyon Rd	Hot Springs	SD	57747
Fischer	Ronald		711 6th Ave East	Mobridge	SD	57601
Fisher	Donna M		12311 Whittail Rd	Deadwood	SD	57732
Frederick	Shirley		3411 Idlewild Court	Rapid City	SD	57702
Friendshuh	Gary		27098 Elk Rd	Buffalo Gap	SD	57722
Gericke	Rich & Jackie		305 S 14th St	Hot Springs	SD	57747
Goulet	Mary		338 S 5th St	Hot Springs	SD	57747
Grant	Jesse		1938 Detroit Ave	Hot Springs	SD	57747
Gray	Garnder		20228 Avalanche Rd	Whitewood	SD	57793-6414
Gray	Lynn		PO Box 153	Pringle	SD	57773
Gross	Diane		27426 Cedar Rd	Hot Springs	SD	57747-8500
Haacke	Jake		1026 Evanston Ave	Hot Springs	SD	57747
Water Rights Branch	Chief,	NPS-Water Resource	1201 Oakridge Dr # 250	Fort Collins	CO	80525
Harvey	Edward		1545 Albany Ave	Hot Springs	SD	57747
Heafner	Ellen		504 S 19th	Hot Springs	SD	57747
Heinzen	Kip		309 S 6th St	Hot Springs	SD	57747
Helzen	Clifford		309 S 6th St	Hot Springs	SD	57747
Helzen	Virginia M		309 S 6th St	Hot Springs	SD	57747
Hertel	Carolyn		27615 Country View Rd	Hot Springs	SD	57747
Hicks	Luella J		PO Box 144	Buffalo Gap	SD	57722
Holcomb	Terry		105 S 23rd St	Hot Springs	SD	57747
Holmes	Georgia	Hot Springs Council	838 Birch	Hot Springs	SD	57747
Horton	Jeremy A		PO Box 629	Edgemont	SD	57735
Horton, Sr	Roger K		PO Box 629	Edgemont	SD	57735
Susan	Watt	BH Wild Horse	PO Box 790	Hot Springs	SD	57747
Jacoue?	Richardo		601 Albany Ave	Hot Springs	SD	57747

Parties of Record mailing list concerning the Consolidated Case in the matter of Water Permit Application
Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

January 7, 2022

Status "B" Intervenor (continued)

Last Name	First Name	Company	Address	City	State	Zip
Jarding	Mike		27201 Valley Rd	Hot Springs	SD	57747
Jenkins	Patricia		287 Evans Ln	Spearfish	SD	57783
Jensen	Dianna		27999 Cascade Rd	Hot Springs	SD	57747
Johnson	Forest		610 Nellie Ln	Spearfish	SD	57783
Johnson	Terry		26680 Buffalo Butte Dr	Hot Springs	SD	57747
Johnson	Dawn		PO Box 1123	Hot Springs	SD	57747
Just	Lorna		21939 464th Ave	Volga	SD	57071
Kaneshiro	Eloise		1446 Evanston Ave	Hot Springs	SD	57747
Baldwin	Mike	Custer Conservation	25363 US Hwy 385	Custer	SD	57730
Kelley	Don		12637 Meritt-Estes Rd	Deadwood	SD	57732
Kelley	Kim		12637 Merritt-Estes Rd	Deadwood	SD	57732
Klein	Judith		238 N 6th St	Hot Springs	SD	57747
Knuckles	Dennis & Penny		12484 Willow Creek Rd	Custer	SD	57730
Lambert	Sylvia		PO Box 78	Interior	SD	57750
Lamont	Margaret		PO Box 53	Buffalo Gap	SD	57722
Lang	Dan		27564 Ponderosa Rd	Hot Springs	SD	57747
Langer	Greg		PO Box 141	Buffalo Gap	SD	57722
LaRive	Karla R		839 Almond St	Hot Springs	SD	57747
Larson	John E		10374 Dryland Dr	Edgemont	SD	57738
Larvie	Karla		PO Box 752	Hot Springs	SD	57747
Lee	Robert		338 S 5th St	Hot Springs	SD	57747
Magnuson	Nancy C		PO Box 54	Buffalo Gap	SD	57722
Marshall	Carla Rae		PO Box 3184	Rapid City	SD	57709
McComb	DeAnn		PO Box 254	Hot Springs	SD	57747
McGrath	Daria		8403 Pioneer Circle	Rapid City	SD	57701
McGrath	James B		8403 Pioneer Circle	Rapid City	SD	57702
McLean	Linsey		14390 Edgewood Pl	Piedmont	SD	57769
Messenger	Cynthia		12750 Merchen Rd #18	Hot Springs	SD	57747
Meyer	Martin H & Elsa		102 S Connor St	Hot Springs	SD	57747
Meyer	Steven & Lexxie		13050 Lakeview Dr	Hot Springs	SD	57747
Miles	Gary		27528 Rathbun Rd	Hot Springs	SD	57747
Miller	Karen N		3119 Turtle Creek Ct	Rapid City	SD	57703
Miller	Marsha		11820 Red Fox Dr	Maple Grove	MN	55369-6340
Nachtigall	Jean		12746 Country Rd	Hot Springs	SD	57747
Naylor	Valerie		23201 Custer Trails Rd	Rapid City	SD	57702
Neugebauer	Casey		27552 S Buffalo Gap Rd	Oral	SD	57766
O'Rourke	Michael		4513 Leo Dr #4	Madison	WI	53716
Palmer	Raymond		27221 Windy Rd	Hot Springs	SD	57747
Parker	Jason		1005 S River St	Hot Springs	SD	57747
Parker, MD	Valerie A		900 N Rural Rd Apt 1054	Chandler	AZ	85226-6090
Pederson	Mary Helen		437 North 6th St	Hot Springs	SD	57747
Pence	Mel		2330 Washington Ave	Hot Springs	SD	57747
Peterson	Jim		1203 11st St	Rapid City	SD	57701
Peterson	Sarah		510 Jennings	Hot Springs	SD	57747
Phillips	Sarah & AJ		4099 S 570 Apt 15F	Salt Lake City	UT	84107
Piper	Rex & Mildred		1609 Detroit Avenue	Hot Springs	SD	57747
Powell	Cindy		1637 38th St	Rapid City	SD	57702
Preheim	Steve		2317 Washington	Hot Springs	SD	57747
Resident			309 S 6th St	Hot Springs	SD	57747
Rewe	Rick		28149 Shep's Canyon Rd	Hot Springs	SD	57747
Reynar	Charleton T		2500 S Elmwood Ave	Sioux Falls	SD	57105-3318
Richards	Dorothy		340 N 23rd St	Hot Springs	SD	57747
Romey	Craig		342 N 4th	Hot Springs	SD	57747
Rosaaen	Elray		PO Box 125	Buffalo Gap	SD	57722
Roseland	Katie		5811 Gemini St	Rapid City	SD	57703

Parties of Record mailing list concerning the Consolidated Case in the matter of Water Permit Application
Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

January 7, 2022

Status "B" Intervenor (continued)

Last Name	First Name	Company	Address	City	State	Zip
Rowe	Cindy		7950 Dark Canyon Rd	Rapid City	SD	57701
Runzerel	Betty		PO Box 836	Hot Springs	SD	57747
Russell	Betty		Po Box 836	Hot Springs	SD	57747
Ruther	Frank		545 N River Apt 110	Hot Springs	SD	57747
Saxonis	Gail M		745 Happy Hollow	Hot Springs	SD	57747
Schwarzenbach	Connie Aann		110 Private Road 2624	Karnack	TX	75661-2538
Schwarzenbach	John		2229 Minnekahta Ave	Hot Springs	SD	57747
Seabolt	Marsha		4435 Dolphin	Rapid City	SD	57701
Sharp	Barbara		445 S 3rd St	Hot Springs	SD	57747
Simpson	Ashley		PO Box 587	Hot Springs	SD	57747
Simpson	Ashley		PO Box 587	Hot Springs	SD	57747
Smith	Charlene J		PO Box 481	Rapid City	SD	57709
Smith	Jeremy		287 Evans Ln	Spearfish	SD	57783
Stareck	Susan		PO Box 686	Hot Springs	SD	57747
Stolarcek	Susan		PO Box 686	Hot Springs	SD	57747
Streff	Lila		12379 Beaver Den Dr	Custer	SD	57730
Styger	Linda M		206 Meadowlark Dr	Hot Springs	SD	57747-5202
Tonemah?	Paula		306 Thompson	Hot Springs	SD	57747
Troxel	Jo Beth		303 E Morse St	Callaway	NE	68825
Tubbs	Mark		10891 River Rd	Edgemont	SD	57735
Uptain	Mary Ellen		3213 W Main #112	Rapid City	SD	57702
Van Cleave	Judith R		PO Box 9552	Rapid City	SD	57702-9552
Walton	Kellee		1005 S River St	Hot Springs	SD	57747
Watt	Susan W	BH Wild Horse	PO Box 790	Hot Springs	SD	57747
Weimers	Wendolyn		306 N 19th St	Hot Springs	SD	57747
Weishaupl	Debra J		110 N 3rd St	Hot Springs	SD	57747
White Face	Charmaine	Defenders of the Black Hills	PO Box 2003	Rapid City	SD	57709
White Plume	Debra		PO Box 71	Manderson	SD	57756
Wilkinson	Bette		3718 Redwood St	Rapid City	SD	57701
Wilson	Jerry		30959 Frog Creek Rd	Vermillion	SD	57069
Witte	Russell D		301 S Chicago	Hot Springs	SD	57747
Woodard	Julia		639 Pahsapa Rd	Rapid City	SD	57701
Woodard	Sandra		PO Box 533	Oglala	SD	57764-0533
Wynia	Robin		12750 Merchen Rd	Hot Springs	SD	57747
Zornes	Elton		12742 Hwy 18	Hot Springs	SD	57747
	Rube D		104 Jefferson St	Edgemont	SD	57735

Parties of Record mailing list concerning the Consolidated Case in the matter of Water Permit Application
Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

January 7, 2022

Status "C" Intervenor

Last Name	First Name	Company	Address	City	State	Zip
Anderson	Kenneth D		24035 Palmer Gulch Rd	Hill City	SD	57745
Belitz	Larry & Doris		12747 Oak Rd	Hot Springs	SD	57747
Besco	Heather J		PO Box 82	Buffalo Gap	SD	57722
Birkland	Jay		301 S 6th St	Hot Springs	SD	57747
Birkland	LaVella		301 S 6th St	Hot Springs	SD	57747
Bledsoe	Donald		27635 View Rd	Oral	SD	57766
Brygider	B.R.		104 Tullamore Rd	Garden City	NY	11530-2512
Cromwell	Barbara		1402 W Rapid St	Rapid City	SD	57701
David	Jeremiah		130 E Centennial	Rapid City	SD	57701
Fair	Jon		12909 Shep's Canyon Rd	Hot Springs	SD	57747
Fandrich	Irene		301 S 6th St	Hot Springs	SD	57747
Fields, PhD	Anne		2415 Amberbrooke Ln	Grayson	GA	30017
Forrette III	Adrian		119 S Berry Pine Rd	Rapid City	SD	57702-1911
Furois	Therese Marie		1851 City Springs Rd	Rapid City	SD	57702
Gellerman	Ray		12349 Moss Rock Lane	Custer	SD	57730
Good Voice Flute	Rick		1216 Wambli Dr	Rapid City	SD	57701
Graves	George Ann		304 4th St	Buffalo Gap	SD	57722
Graves	Glen		304 4th St	Buffalo Gap	SD	57722
Heckman	Philip S		11936 Hay Creek Rd	Custer	SD	57730
Heizen	Clifford		309 S 6th St	Hot Springs	SD	57747
Hey	Susan		312 N 40th St	Rapid City	SD	57702
Huston	Sharon		12571 BH Flyway Rd	Hot Springs	SD	57747
Jensen	Lyle		13167 Fall River Rd	Hot Springs	SD	57747
Johnson	Jim		3085 Anderson Rd SE	Port Orchard	WA	98366-8751
Keiswetter	Bonnie		12899 Sapphire Ln	Hot Springs	SD	57747
Keiswetter	Dallas		12899 Sapphire Ln	Hot Springs	SD	57747
Kursave	Louise		27275 SD Hwy 79	Buffalo Gap	SD	57722
Lautenschlager	Shirley & Robert		3970 Red Rock Canyon RD	Rapid City	SD	57702-4867
Lena	Jennifer		8812 Dunsmore Rd	Rapid City	SD	57702
Linderman	Mike		446 Battle Mtn Ave	Hot Springs	SD	57747
Lockhart	Grady		PO Box 152	Oelrichs	SD	57752
Martin	Miriam & Ken		535 Bear Ave	Hot Springs	SD	57747-1404
Mason	Mark		1161 Deadwood Ave #3	Rapid City	SD	57702
McDowell	Gary A		701 South St Apt B	Rapid City	SD	57701
Montague	Katherine L		1216 Wambli Dr	Rapid City	SD	57701-0456
Montgomery	Joe W		210 Pine St	Buffalo Gap	SD	57722

Parties of Record mailing list concerning the Consolidated Case in the matter of Water Permit Application
Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc.

January 7, 2022

Status "C" Intervenors (continued)

Last Name	First Name	Company	Address	City	State	Zip
Morey	Hilary	SD Dept of Game, Fish and Parks	523 E Capitol Ave	Pierre	SD	57501
Nolan	Susan		1164 Lookout Lane	Rapid City	SD	57735
Noyes	Elaine		4104 Lakeview Dr	Rapid City	SD	57702
Ohliger	Eileen		446 S 5th St	Hot Springs	SD	57747
Ohliger	Patricia E		446 S 5th St	Hot Springs	SD	57747
Olson	James L		12350 Beaver Den Dr	Custer	SD	57730
Olson	Rev. Jodi		12350 Beaver Den Dr	Custer	SD	57730
Parker	Sharon		1913 Jennings Ave	Hot Springs	SD	57747
Pettigrew	Karen		1203 St Cloud St	Rapid City	SD	57701
Pettris	Rose or Reese		12544 W Cascade Rd	Hot Springs	SD	57747
Powell	Raymond		2025 Lincoln Ave	Hot Springs	SD	57747
Reynar	Antoinette		2500 S Elmwood Ave	Sioux Falls	SD	57105-3318
Rowe	Floyd		28144 Lot 50, Sheep Canyon	Hot Springs	SD	57747
Smith	Linda L		947 S Chicago St	Hot Springs	SD	57747
Soave	Gail M		14249 Lyons St	Livonia	MI	48154
Tiff	Jeannie		2342 Wilson Ave	Hot Springs	SD	57747
Tyson	Matie		2508 Crown Hill	Rapid City	SD	57702
Walsh or Welsh	Bill		7450 Dark Canyon Rd	Rapid City	SD	57702
Weller	Kathryn		8812 Dunsmore Rd	Rapid City	SD	57702

DEC 27 2021

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	
APPLICATIONS NOS. 2685-2 AND 2686-2,)	
POWERTECH (USA), INC.)	ORDER DENYING POWERTECH
)	MOTION TO AMEND PROCEDURAL
IN THE MATTER OF THE 2012)	ORDER, DENYING CLEAN WATER
GROUNDWATER DISCHARGE PLAN)	ALLIANCE'S MOTION TO ALLOW
APPLICATION SUBMITTED BY)	ELECTRONIC SERVICE, AND
POWERTECH (USA), INC.)	UPDATING PARTIES OF RECORD

PROCEDURAL HISTORY

Powertech submitted applications for two water permits on June 12, 2012. Upon review, approval of the permits was recommended by the Chief Engineer. These applications were publicly noticed and petitions to intervene in the matter were received.

Previously, on March 9, 2012, Powertech submitted an application for a groundwater discharge plan. Upon review, a recommendation of approval was issued, and the matter was publicly noticed. Several hundred petitions requesting a contested case proceeding were subsequently received.

Under the statutes and rules regulating a groundwater discharge plan, the Water Management Board provides the initial approval of the plan by issuing any necessary water quality variance permits and groundwater discharge facility construction permits. See ARSD §§ 74:54:02:09, 74:54:02:11, and 74:54:02:13. The Secretary of the Department, however, issues the final approval of a groundwater discharge plan. See SDCL § 34A-2-36.1 and ARSD § 74:54:02:14. Accordingly, the Secretary appointed the Water Management Board to conduct the contested case proceedings "required by SDCL 34A-2-36.1 and ARSD 74:54:02:14 along with the inter-related permits issued by the WMB under ARSD 74:54:02:09, 74:54:02:11 and 74:54:02:13, and to issue a recommendation to the Secretary[.]" See Appointment of Water Management Board to Conduct Evidentiary Hearing, dated January 29, 2013.

On January 30, 2013, counsel for the Water Rights Program and the Groundwater Quality Program moved to consolidate the matters for further proceedings.

On February 13, 2013, the Prehearing Chair, Ev Hoyt, issued a Procedural Order. That

Order granted the Motion to Consolidate and further provided an outline for the course of these proceedings. In particular, it required intervenors or petitioners to complete an election of participation form. Class A, or Option A, participants were those who intended to fully participate in the proceedings. Class B, or Option B, participants were those who intended only to submit sworn testimony at the beginning of the contested case proceedings. Class C, or Option C, participants included those who wished to rely upon the petitions initially submitted. The Procedural Order indicates that “[a]ny party may change participation status by timely notifying DENR staff . . . and serve copies of the notification upon the parties. The Procedural Order also provided for a limited period of discovery which commenced April 1, 2013, and was required to be completed by August 23, 2013, 45 days prior to the commencement of the contested case proceedings. The parties were also required to provide disclosures of expert witnesses, witnesses, and exhibits prior to the commencement of the contested case proceedings.

Hearing was scheduled to commence on October 7, 2013 and continue through November 1, 2013. Due to the Atlas snowstorm, the hearing was postponed until October 28 through November 1, 2013. The proceedings began with the testimony of the Class B participants. See October 28-November 1, 2013 WMB Minutes. By the conclusion of the proceedings for that week, the Board had heard opening statements and had begun to receive testimony from the Class A participants, namely the testimony of John Mays, who was Vice President of Engineering of Powertech. Before the conclusion of the hearing, the parties were requested to brief several jurisdictional questions. See *id.*

The hearing was scheduled to continue on December 9 through 13, 2013. Briefs regarding the questions presented by the Board were submitted on November 14 and 19- 20, 2013. On November 19, 2013, Powertech also filed a Motion to Continue. The Motion to Continue was granted on November 25, 2013.

The NRC has issued its permits, and those permits are under appeal before the Court of Appeals of the District of Columbia. That matter has been fully briefed and is set for oral argument before the Court of Appeals on November 9, 2021. There is no date-certain for when the Court of Appeals will hand down a decision. The Materials License was initially issued by the NRC in 2014. It went through an appeals process and was eventually remanded to the NRC for further proceedings. That subsequent license is now on appeal. The EPA granted an Aquifer Exemption in November 2020. The Aquifer Exemption is on appeal to the Circuit Court of Appeals for the Eighth Circuit, and the Eighth Circuit is holding that case in abeyance until the Class III and Class V well permits have been resolved. The EPA has issued those permits, but

the EPA provides for different levels of review within the agency and one of those levels of review is with the Environmental Appeals Board (EAB). The EAB now has those permits and is holding off on making a decision until the Court of Appeals with the District of Columbia has ruled on the NRC licensing because there are similar issues. Regarding the Plan of Operations approval, the BLM took comments in August 2020, and there is no indication as to where that is in the process.

Powertech's Motion to Amend the Procedural Order

On May 28, 2021, Powertech filed a Motion to Amend the Procedural Order along with a Brief in Support of the Motion and a proposed amended Procedural Order. On June 17, 2021, the Water Rights Program and the Surface Water Quality Program filed a Response in Opposition to Powertech's Motion. On October 6, 2021, the Board met at their regularly scheduled meeting and considered Powertech's motion as part of its regular agenda.

Appearances were made by: Matt Naasz and Richard Williams on behalf of Powertech; Ann Mines Bailey on behalf of DANR Water Rights and Surface Water Quality programs, Bruce Ellison on behalf of the Clean Water Alliance, Steven Gunn for the Ogalala Sioux Tribe, and Tom Ballanco for the Institute for Range and the American Mustang and Susan Watt.

Discussion

The Order Granting Powertech's Motion to Continue provides that these hearings are continued until "resolution by the federal agencies of Powertech's pending applications for the Dewey-Burdock Project set forth in this Order." To conduct this project, Powertech is required to obtain a materials license from the Nuclear Regulatory Commission. Powertech submitted its application to the NRC on August 10, 2009. According to the NRC Application Review Schedule, licensing action was completed on April 8, 2014. *See* Application Review Schedule for Dewey Burdock at <https://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/dewey-burdock/dewey-burdock-schedule.html>. The matter was then brought before the Atomic Safety Licensing Board (ASLB). Review was then sought in the United States Court of Appeals for the District of Columbia Circuit. In 2018, the Court of Appeals remanded the matter to the NRC for further proceedings. *Oglala Sioux Tribe v. U.S. Nuclear Regulatory Commission, et al.*, 896 F.3d 520 (D.C. Cir. 2018). After subsequent agency proceedings, the matter is currently before the Court of Appeals once again. *See Oglala Sioux Tribe, et al. v. U.S. Nuclear Regulatory Commission, et al.*, No. 20-1489, D.C. Cir.

Powertech is also required to obtain from the Environmental Protection Agency permits for the Class III and Class V wells to be used in the project. The permits were issued by the

EPA on November 24, 2020, with an effective date of December 24, 2020. *See* <https://www.epa.gov/uic/epa-dewey-burdock-class-iii-and-class-v-injection-well-final-area-permits>. However, the matter was appealed to the Environmental Appeals Board (EAB).

Powertech must also obtain an aquifer exemption from the EPA. The aquifer exemption was requested in January of 2013 and EPA issued the grant of the exemption on November 24, 2020. It is currently being appealed before the United States Court of Appeals for the Eighth Circuit. *See Oglala Sioux Tribe v. U.S. Environmental Protection Agency*, No. 21-1167.

Finally, a portion of the project involves federal lands. Accordingly, Powertech must obtain the approval of the Plan of Operations by the Bureau of Land Management (BLM). BLM accepted public comments on the Plan of Operations in August of 2020.

Following argument, a motion was made by the Board to deny the motion to reopen the hearing and to wait, as the original order stated, until the federal issues are resolved. Discussion was held and it was asserted that it does not make sense for this Board to incur significant expense and move forward when the federal appeals court and the other agencies involved could render the Board's decision moot.

Having reviewed the briefs submitted by the Parties, heard the arguments of the Parties, and considered the foregoing the Board finds as follows:

1. Powertech's Motion to Amend the Procedural Order is **Denied**.
2. Powertech may request a status conference with the Board on or after April 6, 2022 and every six (6) months thereafter.
3. The Clean Water Alliance's Motion to Allow Electronic Service is **Denied**.
4. Based on the August 18, 2021 order by Prehearing Officer Freeman to parties to update contact information, U.S. Postal Service address corrections, and contact with parties of record, the following actions are ordered:
 - a. The following parties with undeliverable mail service are removed from future mailings until such time as corrected mailing addresses are received from the party: Gary Heckenlaible, Rebecca Michele Lord, Rick V Summerville, Brianna Badure, Jerri and Ronald Baker, Joe Bassingham, Eddie Berford, Jerry Bloomer, Hannah Bochert, Ray Boots, Karl W Bothul, Rick Britton, Michelle Brock, Allen Chesson, Charles Cox, Georgiana Cross, Teresa Daiss, Kendra Dexter, Ross Dexter, Leora Drapper (Doppen), Rosie Elmore, Tom Emanuel (Executive Director - SD Peace & Justice Center), Elaine Everhart, Jeannie Fine, Jana Firkins, Lisa Freshour, Judy Gaalough, Judy Gaalswyk, Amber Gill, May Gozelet,

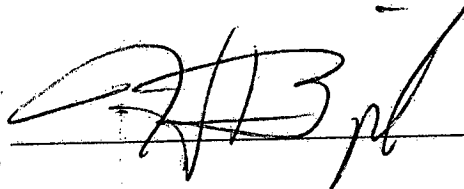
Joel Hawkins, Moses-Ciser & Veronica Hernandez, Patricia Hernandez, B J Hunter, Anglea and Mike Jarding, Cheryl Jarding, John B Jarding, Dan Jensen, Maxine Jensen, Corey Kennedy, Shawntera Kennedy, Jewell Keown, Stanley T Keys, Matt Lanz, Calvin Larive, Pam Ludweg, Susan Malewke, Lisa Masterson, Jim McKean, Billy Jack McLaughlin, Neal Miller, Glenn Mushaney, Jason Nachtigall, Richard Nowlan, Madeline Ortego, Otis Osborn, ~~Mary Helen Pederson~~, Chris Pierce, Linda Pirales, Gary Putnam, Jim Red Cloud, Resident (12560 Beaver Creek Rd, Hot Springs SD), Grant Rush, Mary and Jason Salway, Gary Schweigert, Peggy Semler, Robert V Shannon, Russ Sisk, J Smith, Maura Smith, Dale Steineke, Darla Stevens, Richard Stone, Michelle Sugeg, Dennis Sutherland, Alison Swan, Niklaus Towne, Loraine Tucker, Lennie Walleen, Barbara Walter, Betty Welch, Kristen Wilder, Alica, Beth Audette, Sister Gabriella Crowley, Joe Drapper (Doppen), Margaret Ikonen, Judith A Joba, Regina A Koch, Bonnie & Donald Maritz, Jody McKean, Carol Merwin, Virginia Panarella, Carrie Regelin, J & M Shaw, Dewane Stearns, Larry Tegantvoort, Milli Vong, Trip Williams, Karen Yekel;

- b. The following parties' addresses and contact person for entities shall be updated either due to mailing address corrections received from the U.S. Postal Service or responses to the August 18, 2021 order of Prehearing Officer Freeman or by request from a party: Angelia Baldwin, Rebecca R Leas, Susan Watt (BH Wild Horse Sanctuary), Mike Baldwin (Custer Conservation District), Hilary Morey (SD Dept. of Game, Fish and Parks), Barbara Cromwell, Robert Nelson (City of Hot Springs replacing former Mayor Don DeVries), Keith Alarie, Mary R Burrows, Garnder Gray, Diane Gross, Marsha Miller, Valerie A Parker - MD, Charleton T Reynar, Frank Ruther, John and Connie Aann Schwarzenbach, Linda M Styger, Judith R Van Cleave, Rick Draeger, Jim Johnson, Antoinette Reynar, Frank James (Director of Dakota Rural Action replacing Jillian Anawaty), Mark & Jennifer Belitz, Julie & Emily Christensen, Shirley and Robert Lautenschlager, Miriam and Ken Martin, Chief - Water Rights Branch of NPS Water Resources Div (replaces William R Hansen former division chief), Mary Helen Pederson;
- c. Based on requests from spouses, received either via email or phone, to remove their deceased spouses as parties of record or post office notification, the following persons are removed as parties of record: Jon Fair, Laurence Lamont,

Alan Walker, George Corrigan, William Cing, Margaret Mary Keogh;

- d. Based on contact received via letter, phone, or email from the following persons requesting to have themselves removed as parties of record, the following persons are removed as parties of record: Jerry Simunter (correct spelling Simunek), Gwen E Kaneshiro, Marion Muhm;
- e. Letter received from Cathy Sotherland requesting to replace Dennis or Jennie Sutherland with Cathy Sotherland. Request **Denied**.

Dated this December 8, 2021.

A handwritten signature in dark ink, appearing to read 'T. Bjork', is written over a horizontal line.

Tim Bjork, Chairman

South Dakota Water Management Board

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated January 7, 2022, and the Adopted Order dated December 8, 2021, regarding DENYING POWERTECH MOTION TO AMEND PROCEDURAL ORDER, DENYING CLEAN WATER ALLIANCE'S MOTION TO ALLOW ELECTRONIC SERVICE, AND UPDATING PARTIES OF RECORD concerning the contested case hearing for the Consolidated Case in the matter of Water Permit Application Nos. 2685-2 and 2686-2 and Ground Water Discharge Plan GWD 1-13, Powertech (USA) Inc., was served upon the following and on the attached Parties of Record mailing list dated January 7, 2022, by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on January 7, 2022.

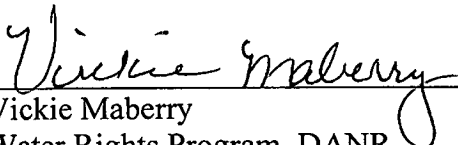
Powertech (USA) Inc.
c/o Matthew E. Naasz and Richard M. Williams, Counsel
Gunderson, Palmer, Nelson & Ashmore, LLP
P.O. Box 8045
Rapid City SD 57709

Steven R. Blair, Assistant Attorney General
PO Box 70
Rapid City, SD 57702
Counsel for SD DANR

Above also Sent Inter-office to:


Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
Counsel for SD DANR

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501
Counsel for Water Management Board


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7 day of January, 2022.


Notary Public
My Commission expires October 26, 2022

Brenda Anderson, Notary Public
My Commission Expires
October 26, 2022